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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

L. COHEN GROUP d/b/a
LUXURYCHAIR.COM,

Plaintiff,

v.

GOOGLE, INC., a corporation; and
HERMAN MILLER, INC., a Michigan
corporation,

Defendants.

Case No.

NOTICE OF REMOVAL

IC 05 4476

1. Herman Miller, Inc. ("Herman Miller") is a defendant in a civil action brought on November 3, 2005, in the Superior Court of the State of California, County of Santa Clara, Case No. 105 CV 051766 (the "Action"). Pursuant to 28 U.S.C. §§ 1441 and 1446, Herman Miller hereby removes the Action to the United States District Court for the Northern District of California, San Jose Division, which is the judicial district and division in which the Action is pending.

1 2. The grounds for removal of the Action are:

2 a. This is an action of a civil nature in which the District Courts of the United
3 States have been given original jurisdiction in that it arises under the laws of the United States within
4 the meaning of 28 U.S.C. § 1331.

5 b. Specifically, Plaintiff L. Cohen Group ("Cohen") has brought in the Action
6 two claims that arise under federal law. Count I of Cohen's complaint in the Action seeks a
7 "Declaratory Judgment of Non-Liability for Trademark Infringement" of Herman Miller's HERMAN
8 MILLER and AERON trademarks, for which Herman Miller owns federal trademark registrations
9 (U.S. reg. nos. 1,944,726; 1,340,560; 1,164,136; 733,770 and 772,411). Count II of Cohen's
10 complaint in the Action is a claim for false advertising against Herman Miller, explicitly brought
11 under § 43(a) of the Federal Lanham Act, 15 U.S.C. § 1125.

12 c. All of the other bases for relief asserted by Cohen in the Action arise out of the
13 same set of facts and are part of the same case or controversy, such that this Court has supplemental
14 jurisdiction over them within the meaning of 28 U.S.C. § 1367(a). Thus, this is an action over which
15 this Court would have had original jurisdiction had the Action been filed initially in this Court, and
16 removal to this Court therefore is proper under the provision of 28 U.S.C. § 1441(a).

17 d. This Court also has diversity jurisdiction under 28 U.S.C. § 1332. There is
18 complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of
19 interest and costs. Plaintiff L. Cohen Group is a New York corporation with a business address at
20 335 Throop Avenue, New York, NY 11221. Herman Miller is a Michigan corporation with its
21 principal place of business at 855 East Main Avenue, Zeeland, Michigan 49464-0302.

22 3. This Notice of Removal is timely under 28 U.S.C. § 1446 because the complaint in the
23 Action was filed and served on November 3, 2005. Thus, this Notice of Removal, which likewise
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1 was filed on November 3, 2005, has been filed well within thirty (30) days of Herman Miller's
 2 receipt of the complaint in the Action, and therefore is timely under 28 USC § 1446.

3 4. Pursuant to the provisions of 28 USC § 1446, Herman Miller attaches to this notice,
 4 and incorporates herein by reference, copies of the following papers, which constitute all of the
 5 process, pleadings, and orders served on Herman Miller prior to its removal of the Action:
 6

7 a. "Complaint for Injunctive Relief, Declaratory Relief and Damages" (Ex. 1);

8 b. Summons (Ex. 2);

9 c. "Plaintiff's *Ex Parte* Application for: (1) Temporary Restraining Order to
 10 Preserve the Status Quo *Ante*; and (2) Order to Show Cause re Preliminary Injunction / Memorandum
 11 of Points and Authority / Declaration of Michael C. Spillner" (Ex. 3);

12 d. "Declaration of Levi Cohen In Support of L. Cohen Group d/b/a
 13 Luxurychair.com's *Ex Parte* Application for a Temporary Restraining Order And Order to Show
 14 Cause re Preliminary Injunction" (Ex. 4);

15 e. "[Proposed] Order Granting Plaintiff's *Ex Parte* Application for: (1) A
 16 Temporary Restraining Order to Preserve the Status Quo *Ante*; and (2) An Order to Show Cause re
 17 Preliminary Injunction" (Ex. 5);

18 f. "Notice of Application and Verified Application of Raymond J. Mullady, Jr. to
 19 Appear *Pro Hac Vice* on Behalf of Plaintiff" (Ex. 6);

20 g. "Declaration of Michael C. Spillner in Support of Verified Application of
 21 Raymond J. Mullady, Jr. to Appear *Pro Hac Vice* on Behalf of Plaintiff" (Ex. 7).
 22

23 Dated: November 3, 2005

HARVEY SISKIND JACOBS LLP

24 By: 
 25

26 SETH I. APPEL

27 Attorneys for Defendant
 28 HERMAN MILLER, INC.

PROOF OF SERVICE

The undersigned declares: I am a resident of the United States and am employed in the City and County of San Francisco, State of California; I am over the age of eighteen years and not a party to the within action; my business address is Four Embarcadero Center, 39th Floor, San Francisco, California.

On the date indicated below, I served the following documents:

NOTICE OF REMOVAL

by placing a true copy thereof enclosed in a sealed envelope and served in the manner described below to the interested parties herein and addressed to:

Thomas H. Zellerbarch, Esq.
Michael C. Spillner, Esq.
Orrick Herrington & Sutcliffe
1000 Marsh Road
Menlo Park, CA 94025

MAIL: I caused such envelope(s) to be deposited in the mail at my business address, with postage thereon fully prepaid, addressed to the addressee(s) designated. I am readily familiar with the business practice of collecting and processing correspondence to be deposited with the United States Postal Service on that same day in the ordinary course of business.

X

HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

VIA FAX: The facsimile machine I used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

X

(FEDERAL): I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(STATE): I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2005, at San Francisco, California.


Cynthia R. Lee